Supreme Court
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No. 93-320

In the
Supreme Court of the United States

OCTOBER TERM, 1993

PAUL G. KEOUGH, ACTING REGIONAL ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, REGION 1,
Petitioner,

v.

AMERICAN POLICYHOLDERS INSURANCE COMPANY,
Respondent.

MEMORANDUM OF RESPONDENT, AMERICAN POLICYHOLDERS INSURANCE COMPANY, SUGGESTING A QUESTION OF MOOTNESS.

BRIAN M. HURLEY,
RACKEMANN, SAWYER & BREWSTER, P.C.,
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(617) 542-2300
Attorney for Respondent

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

BEST AVAILABLE COPY

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Respondent American Policyholders Insurance Company ("API")[1] respectfully suggests that a question of mootness has

[1] API is wholly owned by American Patriot Group, Inc., a Massachusetts general business corporation, which in turn is wholly owned by American Mutual Liability Insurance Company, an insolvent Massachusetts insurance company presently in receivership.

arisen with respect to the issue presented by the petition for a writ of certiorari. Specifically, API wishes to draw the Court's attention to the fact that on October 1, 1993, API filed in the Massachusetts Superior Court Department, Middlesex County, where this case is pending after remand from the United States District Court for the District of Massachusetts, a Notice of Voluntary Dismissal with respect to petitioner Paul G. Keough, Acting Regional Administrator of the Environmental Protection Agency, Region 1 ("Mr. Keough"). A copy of the Notice of Voluntary Dismissal, as filed, is attached as Exhibit A. Pursuant to the applicable rule of Massachusetts procedure, no action is required by the state court as a condition precedent to dismissal.

API believes that its dismissal of Mr. Keough as a party in the pending state court litigation renders moot the issues presented by Mr. Keough's petition for certiorari. In light of this development, API requests that this Court deny Mr. Keough's petition so that API may, without delay, continue prosecuting its case against the remaining defendants in state court.

Respectfully submitted,

BRIAN M. HURLEY
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Boston, Massachusetts 02111.
(617) 542-2300
Attorney for Respondent

October 21, 1993

EXHIBIT A.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 91-08667

AMERICAN POLICYHOLDERS INSURANCE COMPANY,
Plaintiff,

v.

NYACOL PRODUCTS, INC., ET AL.,
Defendants.

NYACOL PRODUCTS, INC.,
Third-Party Plaintiff,

v.

COMMERCIAL UNION INSURANCE COMPANY, ET AL.,
Third-Party Defendants.

NOTICE OF VOLUNTARY DISMISSAL

American Policyholders Insurance Company ("API") hereby dismisses Paul G. Keough, Acting Regional Administrator of the Environmental Protection Agency, Region I ("Regional Administrator") as a party to this case pursuant to Rule 41(a) of the Massachusetts Rules of Civil Procedure. API, through counsel, states that the Regional Administrator has not served

an answer or a motion for summary judgment. Accordingly, API is entitled, as a matter of law, to dismiss the Regional Administrator without prejudice.

AMERICAN POLICYHOLDERS
INSURANCE COMPANY

By its attorneys,

/s/ Brian M. Hurley
BRIAN M. HURLEY,
BBO #245240,
DONALD R. PINTO,
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& BREWSTER,
One Financial Center,
Boston, Massachusetts 02111.
(617) 542-2300

October 1, 1993

CERTIFICATE OF SERVICE

I, Brian M. Hurley, certify that I mailed a copy of the foregoing to all counsel of record on this the 1st day of October, 1993.

/s/ Brian M. Hurley
Brian M. Hurley